

LEGISLATIVE UPDATE

COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

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DEPARTMENT OF PUBLIC ADVOCACY

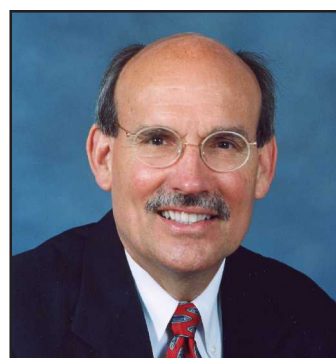
PUBLIC DEFENDER CASELOAD REDUCTION IS UNEVEN

By Ernie Lewis, Public Advocate

Excessive caseloads have been a chronic problem for the Department of Public Advocacy. Excessive caseloads have been a chronic problem for DPA for at least the past twenty years, if not since its inception in 1972. Most recently, in 1997, Bob Spangenberg, on behalf of the ABA Bar Information Program, stated that: “overshadowing all of the problems facing and the solutions proposed by DPA is that of burgeoning caseloads. Over the past decade DPA’s caseloads have increased dramatically, while funding has failed to keep pace. Two years later, in the *Blue Ribbon Group Report* (1999), the Blue Ribbon Group found that DPA’s “per attorney caseload far exceeds national caseload standards.” The recommendation in the report was for urban offices (Louisville, Lexington, and Northern Kentucky) to have a new annual open case per attorney average of no more than 450; no more than 350 cases per lawyer was the recommended standard for rural offices.

Despite significant budget increases following these reports, both overall and individual attorney average caseloads have continued to increase for DPA’s trial attorneys. In FY00, DPA handled 97,818 cases. This rose to over 140,000 for the first time in FY06. Similarly, per attorney caseloads (new open cases per attorney per year) increased from 420 in FY01 to 483 in FY05. In 2005, the General Assembly funded an additional 21 new caseload reduction attorneys for FY06. With caseloads exceeding 140,000 for the first time, this increase in caseload reduction attorneys resulted in a decline from 483 in FY05 to 468 in FY06.

2006 General Assembly funded 36 lawyer positions for caseload relief. In response to the chronically high caseloads, the 2006 General Assembly agreed with Governor Fletcher’s proposed budget funding an additional 36 lawyers to reduce caseloads. The goal was to move caseloads significantly downward closer to the 400 level. Those attorneys, mostly newly graduated attorneys who took the July bar, were hired and trained in the fall of 2006.



Ernie Lewis, Public Advocate

Nine of those positions were sent to the office with the highest caseloads in the Commonwealth, the Louisville Metro Public Defenders Office. The Louisville Office had a caseload average of 604 in FY06.

Projections after three quarters show that caseloads are rising slightly. As of the end of March, DPA projected that the average number of new cases per lawyer would have declined to 398 in FY07. This would only have been true at full staffing. However, the effect of hiring an additional 36 new positions has not been fully realized as the result of a hiring freeze imposed by me in February of 2007. The end result as of the writing of this article is that 50 positions in DPA are now vacant, including 25 trial attorneys.

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**The great myth:
“DPA has received all the funding they need.”**

DPA has been underfunded chronically since it began. DPA remains significantly underfunded. We have made great strides since 1996, but we have far to go in making our system one that is reasonably funded.

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The Louisville Metro Public Defender's Office caseloads are projected to decline with the addition of 9 attorney positions. In FY06, the office average was 604 per attorney. That is projected to decline in FY07 to 536.

Hiring freeze results in delay of caseload relief. Caseload relief has not been achieved as the result of a hiring freeze imposed by me on February 1, 2007. This occurred after DPA was required to begin FY07 \$1.3 million in the hole. \$1.3 million was moved from DPA's FY06 budget into FY07. DPA leadership took several steps to dig out of the hole caused by this beginning of the year deficit, such as delaying the hiring of the 36 new lawyers for several months. However, it became clear in late January that the budget DPA was operating under would not be sufficient to cover all of the authorized positions. The hiring freeze was imposed by me after a request for a current year appropriation was unsuccessful.

The result of this is that the policy goal of achieving caseload reduction during FY07 has not been achieved. While DPA would be at 398 new cases per lawyer were we at full staffing, that simply has not happened. Real caseload reduction will have to be delayed until FY08.

The great myth: "DPA has received all the funding they need." Excessive defender caseloads have been DPA's biggest problem since I became Public Advocate. I have worked to educate members of the General Assembly as well as the public about these excessive caseloads. We have had limited success, resulting in caseloads declining in FY06 and thus far in FY07 at the same time overall caseloads have increased.

As a result of this limited success, I have been hearing for the last two years that "DPA has received all the funding they need," or "it must be nice to have such an increase in funding." Those sentiments, while nice to hear, are myths, pure and simple. DPA has been underfunded chronically since it began. DPA remains significantly underfunded. We have made great strides since 1996, but we have far to go in making our system one that is reasonably funded.

As can be seen below, DPA has fallen in relation to other states' funding levels and remains in the bottom 10 on per capita funding for indigent defense. In addition, DPA continues to fund only approximately \$250 per case in FY06, up from \$233 per case in FY05. It can hardly be said that DPA is now well funded with no more funding needs.

DPA fell from #39 to #42 in funding per capita among all the states. One of the primary ways for policy makers to compare public defender systems is that of examining "cost per capita." This is a simple figure that looks at population against the available funding. At the time of the *Blue Ribbon Group Report* (1999), it was found that "The Department of Public Advocacy ranks at, or near, the bottom of public

defender agencies nationwide in indigent defense cost-per-capita and cost-per-case." Using 1998 figures, the report noted that Kentucky funded its public defender program at \$4.90 per case.

The latest figures released by the Spangenberg Group looked at all of the states in 2002 and 2005. In 2002, Kentucky had a population of 4,089,822, a funding level of \$28,204,090, and a cost-per-capita figure of \$6.90. Kentucky ranked 39th among the states in this cost-per-capita figure.

By 2005, Kentucky's population had risen to 4,173,405, its funding for indigent defense had risen to \$31,498,410, but its rank among the states had dropped to 42nd. In comparison, the #1 state was the District of Columbia, which spent \$96.88 per capita. #2, Alaska, spent \$36.62 per capita. The surrounding states mostly fared better than Kentucky: Tennessee spent \$9.30 per capita and was ranked 32nd; Ohio spent \$9.72 per capita and was ranked 31st; West Virginia spent \$16.27 per capita and was ranked 7th; Indiana spent 6.77 and was ranked 43rd; Missouri spent \$5.20 and was ranked 49th; Virginia spent \$11.91 and was ranked 23rd; Illinois spent \$9.78 and was ranked 30th.

DPA funding per case remains low. At the time of the *Blue Ribbon Group Report* (1999), DPA funding per case was \$187 per case in FY98. By 2005, this had risen to only \$233. In 2006, funding per case was \$250. In a recent report released by the Spangenberg Group, Kentucky was the third lowest among thirteen Southern states. The lowest funded states per case were Tennessee (\$217) and Arkansas (\$219). The higher funded states were Alabama (\$789), North Carolina (\$513), Georgia (\$406), Texas (\$337), and Virginia (\$313). Figures for Florida, Louisiana, and Mississippi were not available.

Defender caseloads remain at 150% of national standards. Open cases per attorney declined to 468 in FY06. It is projected that **at full staffing** they will be at 409 in FY07. National Advisory Commission Standards are that no public defender should open more than 150 felonies per year, nor more than 200 juvenile cases per year, nor more than 400 misdemeanor cases per year. It should be noted that the National Advisory Commission made **no recommendation** on prosecutors' caseload standards. Nor are there known commonly accepted caseload standards for prosecutors.

Most Kentucky public defenders handle a mixture of felonies, juvenile cases, and misdemeanor cases. In FY06, 25% of Kentucky public defender cases were in circuit court, while 14% were juvenile cases, leaving 61% of the caseload being district court cases. With those percentages, a typical Kentucky public defender in FY06 with 468 cases handled 117 felonies, 65 juvenile cases, and 286 misdemeanors. This represents 150% of the national standards.

The ABA has recognized that excessive caseloads are a significant issue for public defenders and public defender supervisors and managers. The American Bar Association recognized in 2006 that there are ethical ramifications associated with excessive caseloads for public defenders. Entitled *Formal Opinion 06-441: Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation*, (May 13, 2006), this opinion states clearly that public defenders are like all other lawyers: they simply cannot represent more cases than they can handle ethically. "If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients." The opinion also recognizes that supervisors and managers of defenders carry ethical responsibilities as well. "Lawyer supervisors, including heads of public defenders' offices and those within such offices having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by individual lawyers."

On the horizon is a loss of 7 lawyer positions from the UK Law School's Rural Drug Prosecution Grant. For the past 2 years, DPA, along with prosecutors in Commonwealth's Attorneys and attorneys in the Court of Justice, have been the recipients of a funding from the University of Kentucky School Of Law. Entitled the Rural Drug Prosecution Grant, this funding has enabled DPA to hire law clerks as well as some attorneys to be placed in counties experiencing an increase in caseload as a result of drug abuse. It is expected that this grant will end sometime during FY08 or 09, and DPA will then lose up to 7 attorney positions. The impact will be an increase in caseloads for both defenders and prosecutors.

What does the future hold? Kentucky needs to fund indigent defense prospectively. I have been the Public Advocate now for over ten years. One of my clearest impressions of the funding process is that Kentucky funds the past without regard to what is likely to happen in the future. What I mean by this is that typically I inform the General Assembly of what our past caseload has been and how many attorneys we need to staff that level of caseload. What I haven't done is to project what I believe caseload levels will be during the biennium and thus what level of staffing the General Assembly should fund to meet that caseload increase. I am coming to the belief that as long as caseloads continue to increase consistently, that we need to begin to request prospective rather than reactive funding. ■

TN Indigent Defense Attorneys Receive Less Than Half the Dollars Allocated to the Prosecution

New report reveals that fairness and accuracy of the Tennessee criminal justice system is jeopardized by funding disparity

A new report on prosecution and indigent defense funding in Tennessee has uncovered disturbing evidence of a significant and unfair imbalance of financial and other resources between the prosecution and indigent defense functions. The report is the first comprehensive analysis of indigent defense and prosecution resources in the state, and indicates that Tennessee's indigent defense system is in dire need of reform. The Spangenberg Group, one of the nation's leading experts on state criminal justice systems, authored the new study.

The report, *Resources of the Prosecution and Indigent Defense Functions in Tennessee* can be found at: <http://www.thejusticeproject.org/state/tn/reports/spangenberg-study.pdf>

The Summary Analysis prepared by The Tennessee Justice Project, who commissioned the study, can be found at: <http://www.thejusticeproject.org/state/tn/reports/spangenberg-summary-analysis.pdf>

The report finds that in fiscal year 2004-2005 (the most recent year for which extensive funding information is available), **the defense function in indigent cases received only \$56.4 million – less than half of the \$130 million to \$139 million the prosecution received.** This disparity affects cases ranging from misdemeanors to death penalty cases.

Furthermore, when taking into account "in-kind" services provided to the prosecution function from various federal, county, and municipal law enforcement agencies and experts, prosecutors receive more than four times as many resources than are provided to indigent defense counsel. While these "in-kind" services cannot be quantified on a state-wide basis, they account for millions of dollars worth of assistance provided annually to prosecutors by local law enforcement agencies in 95 counties and hundreds of towns and cities throughout the state, as well as by federal law enforcement and forensic crime labs.

REALIZING JUSTICE BY BRINGING SOCIAL WORKERS ONTO THE DEFENSE TEAM: TRANSFORMING THE CRIMINAL JUSTICE SYSTEM, REDEFINING DEFENDER SERVICES, AND RESTORING HOPE FOR PEOPLE

By Dawn Jenkins, Executive Advisor

April marked the sixth month since the Department of Public Advocacy's Social Worker Pilot Project was implemented. This Pilot was funded by the 2006 Legislature to determine whether placing social workers in defender trial offices would increase treatment, reduce recidivism, and reduce the costs of incarceration. Treatment instead of incarceration is proving to be the most effective way of increasing public safety and public health, and reducing the number of persons incarcerated. Some states like Pennsylvania have passed treatment vs. incarceration laws to make this happen. In Kentucky, the 2006 Legislature invested in the DPA Social Worker Pilot Project. As a result, DPA placed a trained, experienced social worker in the Covington, Morehead and Owensboro Trial Offices in October, and will place a fourth social worker in the Bowling Green Trial Office in July.

The findings from a sixth month preliminary assessment of the Social Worker Pilot *far exceed* the DPA's expectations.

- 84% of the clients showed signs of mental illness
- 88% of the defendants showed signs of substance abuse
- 74% showed signs of both mental illness and substance abuse also referred to as co-existing diagnosis or dual diagnosis.
- Nearly all of the 114 adults and individuals were referred to pretrial treatment or alternative sentencing resulting in treatment as a result of a DPA social worker's intervention.

A more comprehensive evaluation will be released by the University of Louisville Professor Rod Barber, Ph.D. in June 2007.

Overview of the Social Worker Pilot Project

Between October and April, DPA social workers were assigned to 114 cases, 96 were adults and 18 were juveniles. Each is specially trained to understand client problems and to make educated and informed treatment decisions. Each is appointed early in the disposition of a client's case and to work with the client until six months after the disposition of the case unlike court staff. Each is responsible for helping defendants comply with court ordered sentencing plans.

The Social Worker Pilot is designed so that lawyers appointed to represent our clients in Morehead, Covington and Owensboro evaluate the cases they are assigned. They request the assistance of the office social worker in appropriate juvenile court cases or in adult cases. They consider whether the client may be suffering from mental illness, drug or alcohol



Dawn Jenkins

dependency and whether this could relate back to the charged offense. The office directing attorney screens the cases and refers appropriate cases to the DPA social worker. The social worker confers with assigned counsel and meets with the client. The social worker collects records, meets with the family, identifies available services in the community, and gathers information to inform her in preparing a written pre-trial assessment of the defendant for the attorney. If the client, social worker and attorney agree that a treatment plan can be helpful for the adult or youth, the social worker prepares a plan for early intervention to support conditional release, diversion, or intervention for mental health or substance abuse treatment. With the assistance of the social worker, the attorney advocates this position to the judge. The social worker also works to identify and connect the client with educational and vocational resources and family counseling.

Restoring Hope for the Mentally Ill

Between October and April, the total number of clients from the three Pilot regions with signs of mental illness was 96 out of 114, an average of 84%. The percentage of clients who showed signs of mental illness in Covington was 91%, Morehead was 76%, and Owensboro was 93%. Using a researched-based assessment questionnaire and their expertise, DPA social workers were able to identify signs of mental illness such as mood disorders, cognitive problems, etc. "Finding the necessary treatment facilities without long

waiting lists in the rural and mountain communities may be our biggest challenge,” states Sarah Grimes, MSW, social worker in the Morehead Trial Office. Steve Guerin, Directing Attorney for Morehead expressed concern that the lack of community services creates long waiting lists for services and causes judges to reconsider alternative sentencing to treatment. He states, “Sometimes it may be easier to put someone in jail than to find them the help they need. With a social worker in a public defender office, we are better able to find available programs, whether they are outside the county, outside the mountain region, or outside Kentucky.”

Restoring Hope for Addicted Youth and Adults

Similarly, between October and April, the total number of defendants from the three Pilot regions with signs of substance abuse was 100 out of 114, an average of 88 %. The percentage of clients who showed signs of substance abuse in Covington was 91%, Morehead was 69%, and Owensboro was 81%.

Treatment vs. Incarceration

Public Advocate, Ernie Lewis, believes “there is no way we can incarcerate our way out of the substance abuse or mental health problem.” Research shows that treatment works. When people complete treatment, 60% are more likely to abstain from illegal drugs, 64% more likely to abstain from alcohol, and 45% are more likely to become employed. (UK Professor Robert Walker) In addition, for every \$1.00 invested in treatment, the return is over \$4.52 in savings.

Even though research shows that treatment works, spending for rehabilitation services for persons within the criminal justice system has not kept pace with capital and operating spending (Donohue & Siegelman, 1998).

While an average of 68% of jail inmates have substance abuse dependency prior to incarceration, less than 20% receive treatment.

Because substance abuse treatment is not always offered in county jails, DPA social workers have become experts in finding community services. Treatment and rehabilitative programs in county jails are not sufficient to meet the demand for mental health and substance abuse needs. (Price Foster, *Kentucky Department of Corrections Jail Evaluation Study*)

Jail Overcrowding and Costs

Jail overcrowding is a problem in Kentucky. In 2005, the average number of inmates in Kentucky’s jails above capacity was 2,655 or 22% (Foster, 2005). In his report *Turning Jails into Prisons*, UK Professor Robert Lawson attributes jail overcrowding to judges ordering longer sentences, fewer people released on bond, and a patch-work of new sentencing laws. According to BJA, one in 32 adults in the U.S. is incarcerated. The Department of Corrections estimates that the number of persons in jail or prison in Kentucky today is 20,465 compared to 2,800 persons in 1970. This 7 fold increase is predicted to continue, which could devastate Kentucky’s budget. The Department of Correction’s 2007 budget is \$417.6 million, more than 1/3 of the overall Criminal Justice System’s Budget. Because of additional inmates, DOC received an additional \$10.4 million in April 2007 through an Executive Order. Like Kentucky, other states are seeking new and creative ways to address jail overcrowding including using social workers in public defender offices.

Restoring Hope

DPA social workers are restoring hope for individuals and families. By addressing the root cause of the criminal activity, we can slow the recidivism rate in Kentucky. This shows the connection between mental illness, substance abuse and crime. Of the 32 individuals below, 29 showed signs of mental illness and 29 showed signs of addiction. The majority of these crimes are drug related including substance related charges, theft, fraud or burglary, and multiple charges. DPA’s social workers are successfully ending the cycle of crime and restoring hope for individuals.

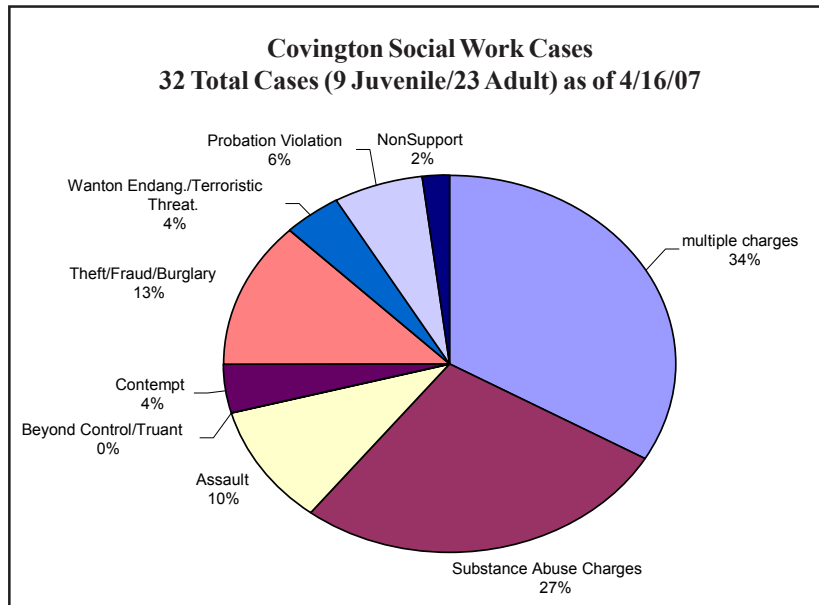
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Jail Substance Abuse Treatment Programs:

| | Number of Jails | Percent |
|--|-----------------|-------------|
| Alcoholics Anonymous program | 21 | 84% |
| Narcotics Anonymous program | 15 | 60% |
| Other Alcohol & drug prevention programs | 9 | 36 % |
| Parenting, anger management, family or personal development programs | 11 | 44% |

NOTE: Jailers were allowed multiple answers so responses do not add up to 100%.

(Taken from the Kentucky Department of Corrections Jail Evaluation Study by Price Foster, Ph.D., Table 11, page 20)



Sarah Grimes

DPA's social worker, Sarah Grimes, in Morehead helps transform the life of a cocaine addict in Morehead.

A 28 year old DPA client is a totally different person following diversion to a local treatment program. The client had multiple offenses for trafficking in order to feed her own addiction. Even though she had been in the court system multiple times,

she had never received treatment for her cocaine addition. Sarah helped the client obtain services through Pathways Comprehensive Care Center. She entered a withdrawal unit and treatment program. Today, the client is on her way to being clean and crime-free, is working, and is reunited with her children.



Jacqueline Joiner

Jacque Joiner helps transform the life of a client with schizophrenia in Covington.

Jacque is continuing to provide intensive case management for a 33 year old African American client charged with assault. He was suffering from schizophrenia but was never diagnosed until Jacque was assigned to

his criminal case. Today, he is staying on prescribed medication to treat his illness and has permanent housing for the first time in his adult life. Jacque built relationships with social workers at the Welcome House, a local social service provider in Covington, where social workers there agreed to serve as payee for him. The client is off the streets, in stable housing, and functioning well.

Transforming the community in Owensboro.

Rachel Pate worked with the River Valley Comprehensive Care Center to develop a program to provide case managers to mentally ill inmates prior to their being released from jail, thereby, assuring that mentally ill clients receive the seamless services they need to successfully function in the community. As part of Rachel's advocacy, River Valley changed their policy manual in the process.



Rachel Pate

Transforming the Criminal Justice System

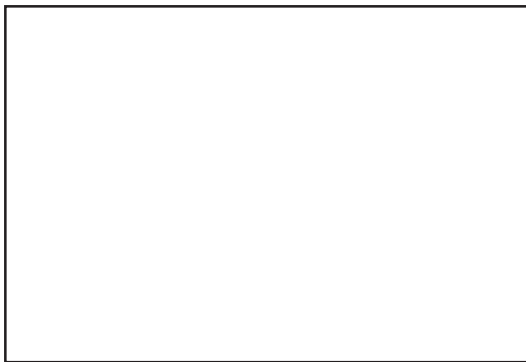
DPA's social workers are helping to transform the criminal justice system by saving Kentucky money, changing the way public defenders deliver indigent services, and changing the lives of Kentuckians.

Significant savings can be realized by using social worker to help divert clients to treatment. Colorado saved \$4.5 million from implementing a social worker pilot while Rhode Island realized an even more significant savings, \$15 million. The cost to house an adult in a Kentucky prison per day is \$47.12. The cost per day to house an adult in jail is \$26.19. DPA fully expects to measure significant savings through the use of these social workers at the end of the one year Pilot. DPA will demonstrate these savings to policy makers during the 2008 Legislative Session.

The DPA Social Worker Pilot is creating communities of hope and justice. Our social workers are a resource that will allow persons charged with a crime to enter recovery, sometimes for the first time in their lives. Clients who are in recovery are better able to live a crime-free life. ■

EFFORTS IN 2007 HAVE PAVED THE WAY FOR 2008 PASSAGE OF LOAN ASSISTANCE FOR KENTUCKY PUBLIC INTEREST LAWYERS

By Margaret Case, General Counsel



House Bill 226 looked like it was primed for passage in the 2007 General Assembly.

Primary sponsors Rob Wilkey (D-Franklin) and Jeff Hoover (R-Jamestown) put bipartisan clout behind the measure. Additional co-sponsors signed on: Larry Belcher (D-Shepherdsville), Jesse Crenshaw (D-Lexington), Teddy Edmonds (D-Jackson), Mary Lou Marzian (D-Louisville), Reginald Meeks (D-Louisville), Tom Riner (D-Louisville), Arnold Simpson (D-Covington), and Brent Yonts (D-Greenville).

It was natural that there would be such support for the measure. The subject of House Bill 226 was a program to encourage and support those lawyers who want to use their legal training for the direct benefit of the public, (as state prosecutors, public defenders, and civil legal services practitioners), rather than entering a more financially lucrative private practice. It was designed to offer limited reimbursement of law school loan expenses in exchange for each year a lawyer will commit to stay in public service employment.

On the morning of February 7, a crowd of some 130 supporters braved frigid temperatures and snowy, icy roads to rally in the Capitol Rotunda in favor of House Bill 226. The crowd would have been even larger, if groups from Northern and Eastern Kentucky had not been prevented by the weather from making it to Frankfort.

Rally participants heard words of encouragement from the bill's co-sponsors and from other speakers who included Rep. Kathy Stein (D-Lexington), Sen. Jerry Rhoads (D-Madisonville), and Gov. Ernie Fletcher's counsel, Jim Deckard.

The bill was the first of the session to be passed out of the House Judiciary Committee with favorable expression that same should pass.

Unfortunately, after the bill left House Judiciary, it was sent to the House Appropriations and Revenue Committee and did not make it out. The demise of the bill in the 2007 regular session was a major disappointment for those public servants who are burdened with law school debt and for the agencies that value those lawyers as employees.

A few years ago, Jefferson Commonwealth's Attorney Dave Stengel predicted that law school student loan assistance will eventually be enacted. As he put it, "It is normal that legislation of any significance such as student loan forgiveness requires several attempts before passage I believe that a student loan forgiveness schedule is essential for us to attract and keep top qualified young prosecutors, just as I am sure that DPA needs such legislation to keep effective young defenders."

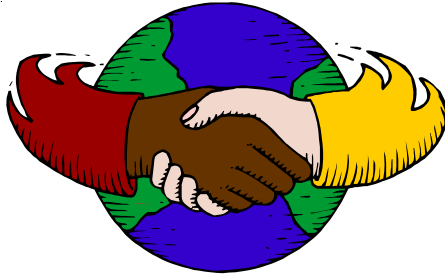
Law school loan assistance addresses the current inequities that exist in the Commonwealth's scheme for law school loan assistance through the Kentucky Higher Education Assistance Authority, which is unavailable for many public servants. It also addresses the recruitment and retention problems experienced by public agencies that cannot compete against private law firms when it comes to salaries.

Kentucky's law school student loan assistance program will be a win-win proposition for all concerned. The primary sponsors of House Bill 226 have vowed to continue pushing the measure in the future. It should pass in 2008. ■



EN ESPAÑOL COMMUNITY DIALOGUE MEETING THE NEEDS OF NON-ENGLISH SPEAKING PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

By Dawn Jenkins, Executive Advisor



The Department of Public Advocacy (DPA) and the Administrative Office of the Courts (AOC) organized a state-wide, daylong community forum on May 24 at the University of Kentucky to discuss the needs of non-English speaking persons in the court and criminal justice system called En Español Community Dialogue. The Justice & Public Safety Cabinet, the Kentucky Thoroughbred Association, and the University of Kentucky helped underwrite the cost of the event.

The question for the day was broad: ***How Can We Ensure Equal Access to Justice for Non-English Speakers in the Criminal Justice System?***

People were invited to identify barriers for non-English speaking people in the Criminal Justice System, potential solutions, what is working, and what is not working. Over 112 people attended including advocates for migrant workers and members of local Hispanic Coalitions, state agency representatives, local police, public defenders, prosecutors, and corrections officers, as well as judges and legislators. An estimated 40% of persons attending were representatives from the Hispanic community. The event was a success because of the number, the diversity, and the depth of discussion of attendees.

People were given an opportunity to describe a way equal access to justice could be achieved within the Kentucky Criminal Justice System. After brainstorming, 21 different topics were selected and participants were invited to share their thoughts, ideas, and personal stories within the small

groups. At the end of the day, participants prioritized five barriers to equal justice in the criminal justice system to be addressed in the future:

- Youth Violence and Gangs
- Kentucky Jails and Constitutional Norms
- Interpreting Services in the Court
- Judicial Education on Immigration Related Issues (ICE detainers, bonds, and legal obligations under the state and federal law)
- Access to Emergency Protective Orders

These barriers to equal justice will be further explored in a report to be released in June. Volunteers from across Kentucky will continue working on both how to define these problems and what the solutions might be in the future.

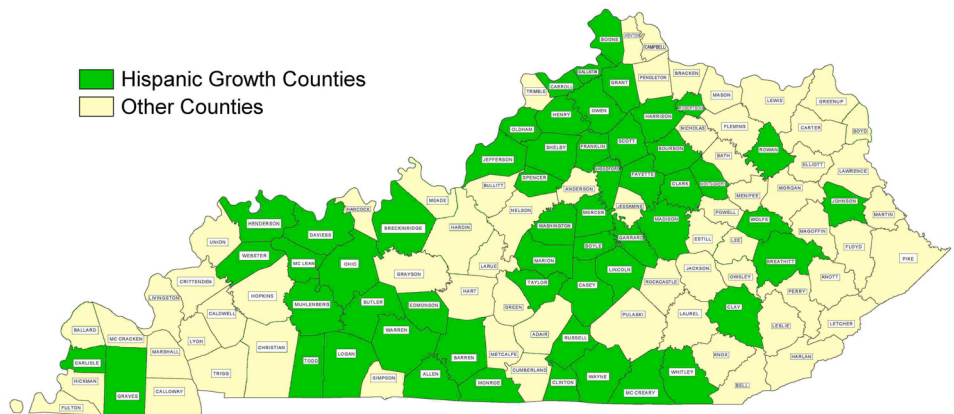
Diverse Population Calls for Criminal Justice System Changes. More non-English speaking persons are moving to Kentucky to work and live and the criminal justice system is not changing and improving as rapidly as the growth.

According to Census data, Kentucky's Hispanic population increased from 30,679 in 1995 to 85,793 in 2005. This represents a 180% increase in just ten years. Jefferson, Fayette, Warren, Shelby, and Boone have the largest Hispanic populations. An astounding 55 counties in Kentucky out of 120 have experienced a tripling of Hispanics in the last five years.

Hispanic Growth Counties

Counties in which the Hispanic population more than tripled between 1995-2005

Source: U.S. Census Bureau



Kentucky is experiencing significant Hispanic population growth in rural areas as the need for farm workers, factory workers, and employees grows. Carroll, Gallatin, Graves, Henry, Shelby, Spencer and Webster showed a ten fold increase between 1995 and 2005.

There are as many as 600 different languages and dialects being spoken by people living and working in KY today. These changes create challenges for agencies whose job is to deliver legal and criminal justice services like interpreters, prosecutors, public defenders, judges, police, corrections, and other court and criminal justice personnel.

More Need for Interpreter Services inside and outside the courtroom. As the face of Kentucky is changing so must our criminal justice system. Differences in communication and language create barriers for victims, defendants, their families, and judges. Likewise, differences in culture create misunderstanding or confusion at arrest, pretrial, and in the courtroom. For example, when a Latino man fails to look you in the eye, this could be a sign of guilt, or a sign of respect depending on who perceives it.

Title 28, § 1827 of federal law provides for court interpreters for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. Likewise, KRS 30A also requires the appointment of interpreters in various stages of criminal proceedings. Nevertheless, the Kentucky AOC currently has only eleven qualified interpreters on staff and is working diligently to certify and license others. AOC contracts with other qualified and licensed interpreters. AOC interpreters are geographically located in the counties of highest need, which is determined by the number of court cases.

Model diversity programs are being designed and used throughout Kentucky to address the language problem. District Court Judge Angela Bisig in Jefferson County and Judge Joseph Bouvier in Fayette County have implemented the first Spanish language and immersion program in Kentucky. According to the Courier-Journal, Judge Bisig stated, "While interpreters are available, it's frustrating not to be able to communicate basic information, such as court expectations, to defendants, especially during pretrial hearings and arraignments, before an interpreter is assigned."

The program is an eight-month Spanish language course through the Louisville Metro Police Department. In January, she and nine police officers traveled to Mexico for an immersion segment to end the Spanish Language Course.

Many criminal justice agencies including the Department of Public Advocacy believe defendants in the criminal justice system need translators at every stage of a client's case from arrest to incarceration and through post-conviction.

Interpreters assist with language, cultural problems and create a more fair and just system. Many non-speaking juveniles and adults are not fully aware of their rights, for example their right to an attorney or their right not to plead guilty, their right to an interpreter, right to be free from violence in the home.

Rights and Responsibilities. Persons with limited English proficiency are moving to Kentucky without a full understanding of their rights and responsibilities. Government agencies and community organizations are educating immigrants, migrant workers, and other persons through a patch-work of materials.

The Louisville Bar Association, who also attended, and a group of Louisville nonprofit and governments organizations recently joined together to publish a Spanish/English booklet entitled *Know Your Rights*. The booklet is a manual for immigrants, refugees, migrants, and undocumented individuals. An earlier edition had been published in Louisville a number of years ago. The manual includes information on issues that range from labor and housing rights to the issue of domestic violence. The information is provided in both Spanish and English. (<http://www.kchr.ky.gov/spanish/> or on Legal Aid's website, *Know Your Rights*.)

Partnering for a Better Kentucky to Ensure Equal Access to Justice. We can partner for a better Kentucky. We must listen to each other and build strong partnerships across government and community lines. *En Español* is an example of a diverse and broad partnership of concerned citizens, agencies and organizations for policy change. The sponsors and participants of *En Español* include Administrative Office of the Courts, Catholic Charities of Louisville, Catholic Conference of Kentucky, Centro de Amistad, Department of Corrections, Department of Public Advocacy, Eastern Area Community Ministries (Louisville), Fayette County Latino Coalition, KY Commission on Human Rights, Justice and Public Safety Cabinet, KY ACLU, Kentucky Refugee Ministries, KY Hispanic Immigrant Centers, Louisville Bar Association, Maxwell Street Legal Clinic, Migrant Network Coalition, Northern KY Coalition for the Homeless, UK Office of International Affairs, the UK Law School, U of L Kent School of Social Work, Unitarian Universalist Church of Lexington, and Webb & Pillich of Cincinnati.

Through partnerships and sufficient resources, we can help address the concerns most pressing in the criminal justice system today.

Working together, we can better meet the growing needs of an ever evolving criminal justice system. We must ensure equal access to justice for all people in Kentucky regardless of race, ethnicity or national origin. ■

CRIMINAL JUSTICE LEGISLATION OF THE 2007 GENERAL ASSEMBLY

By Margaret Case, General Counsel

The following is a review of criminal justice legislation passed during the 2007 General Assembly. We hope that it is helpful to you. However, we encourage you to consult the statutory language under appropriate circumstances.

The effective date of this new legislation will be “the first moment of Tuesday, June 26, 2007.”

The 2007 session of the Kentucky General Assembly was a “short session.” In odd-numbered years, the legislators meet for only thirty working days, as opposed to sixty days in even-numbered years.

Although nearly 800 bills were introduced during this most recent short session, a significant number of the criminal justice proposals never got as far as a committee hearing. This article covers those that made it all the way through the process and were signed into law by Governor Ernie Fletcher.

Senate Bill 88: Prescription Drugs

This bill was touted as a way to stop abuses by online, out-of-state pharmacies and by the people in Kentucky who obtain controlled substances from such pharmacies. In actual fact, the new law goes much further than that. The following provisions are those that are likely to have direct impact on the criminal justice system.

KRS 218A.140 deals with fraudulent practices involving prescriptions. The bill creates two new fraudulent practices, each of which, (like the practices already listed in the existing statute), is a Class D felony for a first offense and a Class C felony for a subsequent offense:

1. “No person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner . . . from whom the person seeks to obtain the prescription.” The bill includes a definition of “practitioner-patient relationship,” and the definition requires the practitioner to have conducted at least one “good faith prior examination.” There is also a definition for “good faith prior examination.”)
2. “No person shall knowingly assist a person in obtaining or attempting to obtain a prescription in violation of this chapter.”

Under the new law, Criminal Conspiracy to commit any Chapter 218A offense will carry the same penalty as the completed offense would carry. Under existing law, the equivalent penalty provision was limited to trafficking offenses.

There are two new provisions that enhance penalties for subsequent offenses:

1. KRS 218A.202 - Intentional failure of a controlled substances dispenser to transmit data to KASPER - a subsequent offense will be a Class D felony.
2. KRS 218A.202 - Intentional unauthorized disclosure of KASPER data, or obtaining KASPER data outside of a bona fide specific investigation – a subsequent offense will be a Class C felony.



Margaret Case

A new section of KRS Chapter 218A will create three new Class D felonies, each of which rises to a Class C felony for a subsequent offense:

1. Criminal possession of a medical record with the intent to unlawfully obtain a controlled substance,
2. Theft of a medical record with intent to violate Chapter 218A, and
3. Criminal falsification of a medical record for the purpose of obtaining or attempting to obtain a controlled substance with intent to violate Chapter 218A.

The definition of “prescription drug” is expanded to include a drug which, under federal law, must be labeled with either of the following notations: “RxOnly” or “Rx.”

KRS 315.320 is amended to provide that a person or pharmacy will be guilty of a Kentucky Class C felony if they are not licensed by Kentucky and they knowingly communicate with someone in Kentucky to (a) fill or refill a prescription drug, or (b) deliver, cause, allow, or aid in the delivery of a controlled substance, imitation controlled substance, counterfeit substance, or prescription drug to the person in Kentucky.

The asset forfeiture statute, KRS 218A.420, is amended to permit law enforcement to sell seized property for its cash value, with the proceeds being distributed 85% to the agency or agencies that seized the property and 15% to the attorney general or to the Prosecutors Advisory Council for deposit on behalf of the prosecutor(s) who participated in the forfeiture proceeding. The attorney general is to promulgate regulations governing expenditure of the funds. Any law enforcement

agency that seizes property for forfeiture must (a) adopt policies that are substantially in compliance with the Department of Criminal Justice Training's model policy and (b) have one or more officers trained in asset forfeiture. All of this notwithstanding, an agency may retain or sell any forfeited vehicle that it seized and then, if sold, the proceeds stay with that agency. The trial court makes the call on how money or property should be allocated between or among multiple entities involved in joint operations.

Senate Bill 65: Sex Offender Registration

The legislature has expanded the list of information that a sex offender must provide to the registry, with criminal penalties for the failure to do so. After the effective date, KRS 17.500(6) will require an offender to register his or her "electronic mail address and any instant messaging, chat, or other Internet communication name identities."

Note, also that Senate Bill 43, the bill on human trafficking, (which is covered below in this article), amends KRS 17.500 by extending the sex offender registration requirement to persons who are convicted of human trafficking that involved commercial sexual activity with a victim under 18.

House Bill 191: Medical Parole Medical Treatment of Jail Inmates

As originally introduced, this bill dealt only with medical parole of prisoners. In the waning hours of the session, however, additional provisions were attached via amendment, in an effort to begin addressing the fiscal crises facing local governments because they house so many inmates in their detention facilities and because medical costs are so high.

KRS 439.3405 allows the possibility of early parole for a prisoner with one of the terminal or very serious medical conditions listed in the statute. Legislators heard testimony about prisoners who have died before the bureaucratic processing of their medical parole could be completed. New provisions in that statute will set out notice and hearing procedures that include timelines. For example, the notice that must be given to victims and law enforcement officials in cases involving Class A, B, and C felons is changed to 15-30 days. (Under KRS 439.340, the normal notice time is 45-90 days.)

New sections are being added to KRS Chapter 441, ("Jails and County Prisoners"). These new sections will permit local facilities to ask the Department of Corrections to accept transfer of, and to take responsibility for the medical treatment and care of, an inmate with medical needs. DOC is to promulgate administrative regulations governing the process. Another new section will require that, except in certain circumstances, local facilities must use DOC's contract pharmacy plan and DOC's contract medical, dental, and psychological care access plan. And, the new law will explain the interplay of various medical cost coverages that might exist in a particular case, (such as the inmate's own insurance, DOC's contracts for care access and drugs, and medical coverage contracts held by local entities themselves).

Senate Bill 43: Human Trafficking

A new offense will be codified in KRS Chapter 529, "Prostitution Offenses." The new crime of human trafficking will be committed in one of three ways:

1. By intentionally forcing someone to do work of economic or financial value, or
2. By intentionally forcing someone to provide services, (with "services" being defined as an ongoing relationship in which one person performs activities under the supervision of, or for the benefit of, the other), or
3. By intentionally subjecting someone to commercial sexual activity through the use of force, fraud, or coercion, except that, if the trafficked person is younger than 18, there need be no force, fraud, or coercion. "Commercial sexual activity" is defined. Also, another definitional provision states that "(f)orce, fraud, or coercion may only be accomplished by the same means and methods as a person may be restrained under KRS 509.010," (which is in the definition section of the chapter on "Kidnapping and Related Offenses).

This new human trafficking crime is a Class C felony, except that it is elevated to a Class B felony if it involves serious physical injury to the trafficked person. Also, if the victim is under 18, the penalty is enhanced by one class. So, if a victim under 18 sustains serious physical injury, the case could be charged as a Class A felony.

Under an amendment to KRS 17.500, the requirement of sex offender registration is extended to persons who are convicted of human trafficking, when the offense involved commercial sexual activity with a victim under 18. "Commercial sexual activity" is defined.

Likewise, KRS 439.3401 is amended. The list of "violent offenders" is expanded to include persons who have been convicted of human trafficking, when the offense involved commercial sexual activity with a minor victim.

KRS 532.043 is amended to impose a five-year, post-release period of conditional discharge on a person convicted of human trafficking, when the offense involved commercial sexual activity. This mandate is not limited to cases in which the victim was underage.

Also created is the new crime of promoting human trafficking. It is committed in one of three ways:

1. By intentionally benefiting financially, or receiving anything of value, from knowing participation in human trafficking, or
2. By using any means to recruit, entice, harbor, transport, provide, or obtain another person, knowing that the person will be subject to human trafficking, or
3. By attempting to do any of the things listed in #2 above.

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4. KRS 506.120(3) is amended to include human trafficking in the list of offenses that can underlie a criminal syndicate charge.

There are currently three degrees of promoting prostitution in KRS Chapter 529. This new legislation combines them into a single degree, which will be a Class A misdemeanor, unless the accused was involved in a prostitution business or enterprise involving two or more prostitutes, in which case it will be a Class D felony.

Human trafficking and promoting prostitution are added to the list of cases in which, under KRS 531.330, any person who appears to be younger than 18 shall be presumed to actually be younger than 18. A defendant may prove that he or she reasonably believed in good faith that the person was older.

And, KRS 532.045 is amended to prohibit probation and sentence suspension for a person convicted of (a) human trafficking, when the offense involved commercial sexual activity, or (b) promoting prostitution, or (c) criminal attempt to commit either of those offenses.

The importuning statute, KRS 510.155, is expanded to include human trafficking, where that offense involves commercial sexual activity. “Commercial sexual activity” is defined.

There are several provisions designed to protect a victim after the trafficking offense is over. For example, a new section of KRS Chapter 431 will prohibit a human trafficking victim from being incarcerated pending trial for an offense arising out of the human trafficking situation, unless incarceration is found to be the least restrictive alternative. Also, a privilege is created in KRS Chapter 422, “Evidence and Lost Records,” for confidential communications between a victim and a “trafficking victim counselor,” and that term is defined.

KRS 413.249 sets the limitation period for a civil action for recovery of damages resulting from childhood sexual assault. Senate Bill 43 expands the definition of “childhood sexual assault” to include human trafficking, when the offense involved commercial sexual activity. “Commercial sexual activity” is defined.

Under KRS 421.350, a court may permit a child witness to testify at a location outside the courtroom and outside the presence of the defendant in certain cases. Senate Bill 43 expands the list of such cases, to include prosecutions for human trafficking, promoting human trafficking, and promoting prostitution.

Senate Bill 111: Jury Service

KRS 29A.100 is amended to add: “The judge shall excuse a mother who is breastfeeding a child or expressing breast milk from jury service until such time as the child is old enough that the mother is no longer breastfeeding the child.”

Senate Bill 153: Court Security Officers

New provisions in KRS Chapter 15, (“Officer Certification and Training”), and in KRS Chapter 70, (“Sheriffs, Constables, etc.”), will relate to court security officers. The new statutes will provide a comprehensive scheme for the officers’ qualification, training, certification, and duties. They will also prescribe the due process required before certification can be revoked. Provision is made for taking into account the training already received by current court security officers, as well as a time frame within which current officers must comply with the new requirements.

Provision of certified court security officers will be a responsibility of the county sheriff.

A court security officer will be prohibited from patrolling the roads, issuing traffic citations except for parking tickets around his or her court facility, performing general law enforcement duties other than court security, and taking action outside the immediate area of his or her court facility, except when transporting prisoners.

The new law will also amend KRS 15.380 to require certification of Commonwealth’s detectives employed under KRS 69.110.

Senate Bill 68 - Motor Vehicle Operator Must Provide Insurance

KRS 304.39-080 requires that the owner of a vehicle registered or operated in the state must carry insurance on the vehicle or must provide security by qualifying as a self-insurer. Prosecutors testified to legislators about what they perceived as a loophole in existing law. They described a pair of roommates, each of whom owned an uninsured car, but each of whom always drove the other roommate’s car instead of his own, because the law did not require a car’s operator to have insurance.

The statute has now been amended. After the effective date, every owner or operator must provide a contract of insurance or provide security by qualifying as a self-insurer. The penalty remains a \$500-1,000 fine and/or up to 90 days in jail for a first offense, with increased penalties for subsequent offenses.

Senate Bill 104: Crisis Intervention Training for Law Enforcement Staff

An amendment to KRS 210.365 will require the Department for Mental Health and Mental Retardation Services to work with other specified agencies in the development of a 40-hour training curriculum based upon “best practices for law enforcement intervention with persons who may have a mental illness, substance abuse disorder, mental retardation, developmental disability, or dual diagnosis.” The stated goals are “to reduce injuries to officers and citizens, to reduce inappropriate incarceration, to reduce liability, and to improve risk management practices for law enforcement agencies.”

The bill includes a list of topics that must be covered in the

curriculum. It specifies the qualifications required of trainers. And, it sets out a timetable for the implementation of this training.

Senate Bill 126: Peace Officer Power of Arrest

The current version of KRS 431.007 gives some police officers, as well as all sheriffs and their full-time deputies, the power to arrest in jurisdictions other than their own, when their assistance has been requested by law enforcement agencies in the other jurisdictions. This new legislation makes a few changes. In the instance of police officers and deputy sheriffs, the new legislation limits this expanded arrest power to those individuals who are “certified pursuant to KRS 15.380 to 15.404.” (The certification requirement does not apply to sheriffs.) And, the bill deletes the requirement that a deputy sheriff must be full-time in order to have such expanded arrest powers.

House Bill 280: Offenses Involving Conduct at Funerals

For the second session in a row, the General Assembly has addressed this topic. This time, the legislators amended KRS 525.055 and KRS 525.155 to specify that the time period, during which a person can commit first-degree disorderly conduct involving specified death rituals or commit interference with a funeral, extends from one hour prior to the event until one hour following its conclusion. This bill also repeals two of the three types of behavior that, under current law, constitute interference with a funeral.

Senate Joint Resolution 48: KASPER

This legislation requires the Health and Family Services Cabinet to immediately enter into reciprocal agreements with other states relative to the Kentucky All Schedule Prescription Electronic Reporting system, and to take all steps necessary for allowing KASPER users to have real-time access to the system and its capabilities.

Senate Bill 83: New Speed Limits

Under an amendment to KRS 189.390, the transportation secretary is authorized to increase speed limits to 70 miles per hour on specified segments of highway. In addition, a new speed limit of 15 miles per hour is set for “off-street parking facility(ies) offered for public use, whether publicly or privately owned.”

House Bill 94: Meth Clean-up

A new section of KRS Chapter 224, Subchapter 1, will establish standards and procedures for the cleanup of properties contaminated by methamphetamine production, with clean-up contractors to be certified, bonded, insured, and registered with the Environmental and Public Protection Cabinet. Law enforcement will be required to notify the relevant health department upon becoming aware of a contaminated property, after which the health department is responsible for protection of the public through posted warning notices and such.

KRS 198A.040 is amended to require that the Kentucky Housing Corporation establish a program of assistance for persons of lower and moderate incomes, to help defray costs of meth assessment and decontamination services. But participation in the program is not available to convicted felons or to anyone the corporation finds to be responsible for the property’s contamination.

House Bill 82: Record-keeping Requirements for Metal Dealers

Pursuant to KRS 365.250 in its current form, certain vendors, collectors, and dealers must keep a register of copper wire and cable purchases, and must make that register available for inspection by any peace officer at any reasonable time. Violations of the law are punished by fines and/or jail sentences. The new legislation expands this law, by covering any copper metal and by requiring that such purchases must be reported within 24 hours to certain law enforcement officials, without those officials having made any request for inspection of records. Penalties remain unchanged.

House Bill 358: Peace Officer Certification and Training Transportation of Inmates to Court Appearances

KRS 15.382 will provide that a bad conduct discharge from any branch of the United States armed forces disqualifies a person from becoming certified as a peace officer. KRS 15.380-15.404 are amended to include a list of causes for which a peace officer’s certification may be revoked after a hearing. Changes are made to the various certification categories of peace officers under KRS 15.386 and KRS 15.392. KRS 15.404 provides for what happens if a peace officer fails to complete basic training or annual in-service training. For example, if there are extenuating circumstances beyond the officer’s control, extensions of time can be made available.

Under an amendment to KRS 18A.202, Kentucky State Police employees will be permitted to participate in the state employee suggestion system, whereby awards are made for suggestions that save the state money or improve state service.

A new section of KRS 197 will require that a party requesting the attendance of a state prisoner for a court appearance in a civil action must pay the cost of the inmate’s transportation, including the state mileage rate and the estimated cost of corrections staff salaries. This will not apply to parties who have been determined by the court to be indigent within the meaning of KRS Chapter 31 or other applicable law.

House Bill 114: Jail Canteen Accounts

KRS 441.135 permits local jailers to maintain canteens for inmates. A 2007 amendment to the statute will specify how much money each jail, (depending upon the size of its inmate population during the preceding fiscal year), must have in its jail canteen account. There is an exemption for counties containing an urban-county government or a consolidated local government.

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House Bill 78: Certified Peace Officers

Commonwealth detectives employed under KRS 69.110 and county detectives employed under KRS 69.360 are added to the list of persons who may be certified as peace officers if their employing agencies request such certification. The bill amends KRS 15.380.

House Bill 23: Emergency Medical Treatment of Assistance Dogs

A new section of KRS 258.500 is created: "Emergency medical treatment shall not be denied to an assistance dog assigned to a person regardless of the person's ability to pay prior to treatment." (The term "person" covers persons with disabilities as defined in KRS 210.770, as well as trainers of assistance dogs.) Violations are punished by a fine of \$250-1,000 and/or 10-30 days in jail.

House Bill 273: County Law Libraries

KRS 172.100 requires that each county seat must have a county law library, located by the fiscal court in the courthouse or a building adjacent to the courthouse. Under this new legislation, a fiscal court could opt to locate the county law library "in the local public library, or in a building where sessions of the District or Circuit Court are regularly held." The bill also specifies that counties may provide online legal resources.

Senate Bill 144: Reorganization of the Justice & Public Safety Cabinet

The Justice and Public Safety Cabinet has been operating under Executive Orders for some time now, awaiting the formal enactment of Governor Fletcher's plan for organizing the state's justice-related agencies. With passage of Senate Bill 144, the Cabinet's structure and functions are codified, rather than being in force merely by virtue of an Executive Order.

Agencies added to the newly named "Justice and Public Safety Cabinet" are: the Office of Drug Control Policy, the Office of Legislative and Intergovernmental Services, the Office of Management and Administrative Services, the Office of Public Safety Training, the Department of Kentucky Vehicle Enforcement, the Department of Public Advocacy, and the Office of Investigations, which is limited to investigating only matters that are internal to the Cabinet. The bill also includes a listing of the divisions within each of the Cabinet's departments.

The Department of Public Advocacy, ("DPA"), is attached to the Cabinet for administrative purposes only. The new statute specifies that:

1. Unlike the Cabinet's other commissioners, who report to the Secretary, the Public Advocate reports instead to the Public Advocacy Commission,
2. The Cabinet has no control over DPA's information

technology, equipment, and use unless granted access by court order,

3. The Secretary may "direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet except laws and functions vested in the Department of Public Advocacy,"
4. DPA is not one of the Cabinet's "criminal justice agencies" that must share data with the Kentucky Unified Criminal Justice Information System and with the Administrative Office of the Courts,
5. The Cabinet's Office of Investigations may be used to investigate matters inside DPA only when such investigation would have "no prejudicial impact upon a person who has an existing attorney-client relationship with the Department of Public Advocacy," and
6. One member of the Public Advocacy Commission shall be the executive director of the Cabinet's Office of Legislative and Intergovernmental Services, (rather than the executive director of the Criminal Justice Council, since the bill also abolishes the executive director position, as described later in this article).

Other provisions of interest in the 466-page bill include:

1. Extremely significant changes to the Kentucky Criminal Justice Council, including:
 - a. A change in its purpose and function –
deleting such matters as:

advising and making recommendations "for long-range planning regarding all elements of the criminal justice system"

disseminating information on criminal justice issues and crime trends

recommending changes in the law necessary to address problems identified in local communities relating to gangs

providing technical assistance to all criminal justice agencies

reviewing and evaluating proposed criminal justice legislation

and substituting:

"The council shall undertake such research and other activities as may be authorized or directed by the secretary of the Justice and Public Safety Cabinet or the General Assembly."
 - b. Changes to the Council's membership, weighting it more heavily as a political group than as a cross-section of diverse interests –

addition of:

the Cabinet Secretary, who will be a full member instead of only an *ex officio* member

the Deputy Cabinet Secretary, who will serve as deputy chair
two members selected by the Speaker of the House
two members selected by the Senate President
the Commissioner of the Kentucky State Police

deletion of:

the House Judiciary Committee chair
the Senate Judiciary Committee chair
a crime victim selected by the Governor
a victim's advocate selected by the Governor
a college/university professor specializing in criminology, corrections, or similar discipline, selected by the Governor
the president of the Kentucky Sheriffs' Association
a person selected by the Fraternal Order of Police
the president of the Kentucky Association of Chiefs of Police
a member of the Prosecutors Advisory Council, chosen by the council
the Chief Justice, or a jurist selected by the Chief Justice
a member of the Kentucky Jailers' Association selected by the association's president
a member of the Circuit Clerks' Association
three criminal law professors, one each from UK, UofL, and Chase, selected by the Governor
a district judge selected by the Chief Justice
a circuit judge selected by the Chief Justice
a Court of Appeals judge selected by the Chief Justice
a representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders
an individual with demonstrated commitment to youth advocacy, selected by the Governor
the executive director of the Commonwealth Office of Technology

c. Provision for meetings only upon the call of the chair, rather than (i.) regular meetings at least quarterly and (ii.) special meetings at the request of the Governor or a majority of the members

d. Elimination of the Council's full-time executive director

2. Changes to the Kentucky State Corrections Commission, including:

a. Significant changes in its membership –

addition of:

the Cabinet Secretary (or designee)
the DOC Commissioner (or designee)
the Deputy Commissioner of DOC's Office of Adult Institutions

the Executive Director of the Cabinet's Office of Legislative and Intergovernmental Services (or designee)
an additional circuit judge appointed by the Chief Justice, (for a total now of two, rather than one)
a practicing attorney appointed by the Governor
two additional service providers from the field of mental health, substance abuse treatment, or vocational and educational training, appointed by the Governor, (for a total now of four, rather than two)
a person, appointed by the Governor, qualified to express the views of organized labor
a person, appointed by the Governor, qualified to express the views of business and industry
three at-large members appointed by the Governor

deletion of:

the Criminal Justice Council's executive director, (since that position is being abolished, as reported earlier in this article)

b. Creation of a Parole Board Nominating Committee, a process for soliciting nominees for vacancies, and a process for submission of candidates to the Governor

c. Empowering the Commission and its individual members to inspect any state penal institution and advise the DOC Commissioner about their findings; empowering the Commission or a majority of its members to have full access to the grounds, buildings, books, and records of an institution, as well as empowering them to subpoena witnesses, take proof, or hear testimony under oath relating to an institution.

3. Changes related to vehicle enforcement staff — For example, under a new section in KRS Chapter 15A, the Governor or Cabinet Secretary can authorize such staff to enforce all state laws and regulations, rather than just those related to motor carriers, highways, and driving. Provision is also made for such staff to exercise their powers outside of their usual jurisdictions under a long list of specified circumstances. But, their primary responsibility remains “the enforcement of federal, state, and local motor carrier, and for-hire carrier laws, administrative regulations, and ordinances.”

4. A requirement that a local government, in order to share in the distribution of funds from the Law Enforcement Foundation Program fund, must have a written policy and procedures manual on domestic violence, including procedures for 24-hour access to protective orders, procedures for enforcement of court orders or relief when protective orders are violated, procedures for timely and contemporaneous reporting of adult abuse and domestic violence to CFC, and matters relating to victim rights, assistance, and service. ■



Legislative Update

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GLASGOW OPEN HOUSE



The Glasgow Office was the last full-time office to open in 2005, and in May relocated to a new facility. An Open House was held on May 25. Rep. Johnny Bell was present and spoke at the Open House, as did Circuit Judge Phil Patton. In addition, the Mayor of Glasgow, Darrell Pickett, the Barren County Judge Executive, Davie Greer, the Circuit Clerks for Barren and Metcalfe Counties, the President of the Glasgow Bar, and many other community members were in attendance.